

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 15 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

BARBARA J. ERITANO,

Plaintiff - Appellant,

v.

MICHAEL J. ASTRUE,** Commissioner
of the Social Security Administration,

Defendant - Appellee.

No. 05-17366

D.C. No. CV-04-06592-LJO

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, Magistrate Judge, Presiding

Submitted November 9, 2007***
San Francisco, California

Before: NOONAN and McKEOWN, Circuit Judges, and KORMAN****, Senior
Judge.

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** Michael J. Astrue is substituted for his predecessor Jo Anne Barnhardt
as Commissioner of the Social Security Administration. Fed. R. App. P. 43(c)(2).

*** The panel unanimously finds this case suitable for decision without
oral argument. See Fed. R. App. P. 34(a)(2).

Barbara Eritano appeals the decision of the district court affirming the Social Security Administration's denial of her application for disability insurance benefits. On appeal, Eritano raises the sole issue of whether the Administrative Law Judge ("ALJ") erred in rejecting portions of an examining physician's medical report.

We review de novo the district court's decision. See Harman v. Apfel, 211 F.3d 1172, 1174 (9th Cir. 2000). In doing so, we give deference to the Commissioner's decision to deny benefits, and we will only set aside that decision "if it is not supported by substantial legal evidence or if it is based on legal error." Flaten v. Sec'y of HHS, 44 F.3d 1453, 1457 (9th Cir. 1995).

In denying Eritano's application for benefits, the ALJ gave "greater weight" to the physical evaluation of an examining physician, Dr. Manohara, but rejected a portion of his report. An ALJ may disregard part of an examining physician's opinion, or even an entire report, if it is based on a claimant's exaggerated claims. See Sandgathe v. Chater, 108 F.3d 978, 980 (9th Cir. 1995). When a report is rejected in part or in its entirety, the ALJ must provide an explanation for the rejection. See Embry v. Bowen, 849 F.2d 418, 421 (9th Cir. 1988). The ALJ met this burden. He set forth his reasons for finding that Eritano's testimony was "not entirely credible," and then he explained that a hypothetical based on Dr.

Manohara's conclusion was not reliable because it was based on this unsupported testimony. The ALJ's decision was supported by substantial evidence and not based on legal error.

AFFIRMED.